

Message Text

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ORIGIN EB-07

INFO OCT-01 EA-07 ISO-00 AGRE-00 CIAE-00 COME-00 DODE-00
DOTE-00 FMC-01 INR-07 NSAE-00 SAL-01 CG-00 DLOS-06
OES-06 AID-05 OMB-01 L-03 TRSE-00 /045 R

DRAFTED BY EB/TCA/MA:CTAYLOR,JR:EW
APPROVED BY EB/TCA/MA:RKBANK
EA/PHL:JSARTORIUS
AGR/CCC:RSPENCER
FMC:TCHRISTENSEN
EB/ORF/OPF/FPD:FSPILLMAN

----- 022670 /14

R 152319Z DEC 76
FM SECSTATE WASHDC
TO AMEMBASSY MANILA

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ATTENTION: AGATT

E.O. 11652: N/A

TAGS:EWWT, RP

SUBJECT: SHIPPING DISCRIMINATION: FLAG PREFERENCE AND
CCC-FINANCED SHIPMENTS

REF: MANILA 18920

1. REGARDING PARA 5 OF REFTTEL, DEPARTMENT HAS DISCUSSED
MATTER WITH USDA AND CAN CONFIRM THAT CCC CREDIT PROGRAM
IS CONSIDERED COMMERCIAL IN NATURE AND NOT SUBJECT TO
U.S. CARGO PREFERENCE. THIS INTERPRETATION HAS BEEN
SUSTAINED BY SERIES OF US ATTORNEY GENERAL OPINIONS.

2. REGARDING DBP "RELENDING" OF CCC CREDITS, FOLLOWING
IS OUR UNDERSTANDING OF DBP FUNCTION. WHEN CCC ESTAB-
LISHES A LINE OF CREDIT, IT REQUIRES THAT A LETTER OF
CREDIT BE ISSUED IN FAVOR OF CCC BY A BANK. IN RECENT
YEARS, THESE L/C'S HAVE BEEN ISSUED BY U.S. BANKS WITH
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BRANCHES IN PHILIPPINES. ALTHOUGH L/C IS ISSUED AT

REQUEST OF PHILIPPINE BUYER OF COMMODITIES, BANK IS PROHIBITED (BY CENTRAL BANK AND/OR FOREIGN EXCHANGE CONTROL REGULATIONS) FROM ISSUING L/C WITHOUT DBP APPROVAL. IN ADDITION TO APPROVING L/C, DBP PROVIDES US BANK BRANCH WITH PAYMENT GUARANTEE AND REQUIRES THAT PHILIPPINE BUYER MAKE REPAYMENT TO DBP WITHIN PERIOD NO LONGER THAN 6-12 MONTHS; EVENTUALLY US BANK BRANCH COLLECTS FROM DBP AS DRAFTS ARE PRESENTED FOR PAYMENT UNDER THE L/C BY CCC. DBP THUS ENJOYS USE OF FUNDS FOR DIFFERENCE BETWEEN 6-12 MONTH REPAYMENT PERIOD IT HAS DECREED FOR LOCAL BORROWERS AND ITS FINAL PAYMENT TO CCC (CCC REPAYMENT TERMS CAN BE UP TO 3 YEARS WITH EQUAL ANNUAL PAYMENTS OF PRINCIPLE PLUS ACCRUED INTEREST).

3. IF ABOVE ACCOUNT CORRECT, DBP IS NOT PROVIDING GOP FINANCING FOR COMMODITIES IMPORTED UNDER CCC CREDIT LINE. ON THE CONTRARY, DBP IS USING ITS CONTROL OVER CREDITS FROM A USG ENTITY TO SKIM OFF PART OF THE BENEFIT OF THOSE CREDITS FOR ITS OWN USE. (OF COURSE, IF DBP ESTABLISHED REPAYMENT PERIODS LONGER THAN THOSE OF CCC, IT WOULD BE LIBERALIZING TERMS OF CREDIT AND THUS HAVE BASIS FOR MAINTAINING THAT SHIPMENTS WERE PARTIALLY GOP-FINANCED. GUARANTEE ISSUED BY DBP HAS NO EFFECT ON INTEREST RATE AND IS ACCOMPANIED BY SHORTER REPAYMENT PERIOD FOR BORROWER THAN THAT OF CCC CREDIT LINE; HENCE, IT DOES NOT CONTRIBUTE TO CONCESSIONALITY OF CREDIT TERMS.) FURTHERMORE, OUR UNDERSTANDING IS THAT WHILE BANKS ISSUING L/C'S FIND DBP GUARANTEE A CONVENIENT SECURITY MECHANISM, IN ITS ABSENCE BANKS COULD ISSUE NECESSARY L/C'S ON BASIS THEIR OWN ESTIMATE OF REPUTABILITY OF PHILIPPINE IMPORTING FIRMS.

4. SINCE CARGOES ARE NOT GOP-FINANCED, DBP'S REQUIREMENT THAT PHILIPPINE FLAG VESSELS BE USED APPEARS CLEARLY DISCRIMINATORY. WE BELIEVE THIS DBP PRACTICE WOULD BE VALID REASON FOR U.S. LINES TO REQUEST FEDERAL MARITIME COMMISSION ACTION UNDER SECTION 19 OF THE SHIPPING ACT OF 1916 AND THAT IF THE ISSUE WERE RAISED WITH IT, FMC WOULD HAVE LITTLE CHOICE BUT TO INITIATE SUCH ACTION. WE ASSUME THAT IMPERFECT UNDERSTANDING OF THE LIMITED OFFICIAL USE

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DBP'S PRACTICES IS THE REASON LINES HAVE SO FAR NOT TAKEN THIS MATTER TO THE FMC, SINCE CARGOES INVOLVED ARE SUBSTANTIAL.

5. BEFORE DECIDING WHETHER MATTER SHOULD BE RAISED WITH GOP, DEPARTMENT REQUESTS THAT EMBASSY/AGATT CONFIRM PROCEDURES DESCRIBED IN PARAS 2 AND 3 ABOVE OR INFORM US IF OUR UNDERSTANDING INCORRECT IN ANY WAY. IT

WOULD ALSO BE MOST USEFUL IF EMBASSY COULD SHED LIGHT
ON DBP RATIONALE FOR INTERPRETING ITS ROLE AS GOP
FINANCING JUSTIFYING FLAG PREFERENCE. IF DBP RATIONALE
IS KEYED TO ITS FUNCTIONING AS GUARANTOR FOR BANKS
WHICH ISSUE L/C'S, DEPARTMENT WOULD APPRECIATE EMBASSY'S
COMMENTS ON IMPORTANCE OF THAT ROLE (EMBASSY MAY WISH TO
DISCUSS THIS WITH LOCAL US BANK BRANCH OFFICERS). KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MARINE TRANSPORTATION, LAW, DISCRIMINATION, CREDIT, FINANCIAL PROGRAMS
Control Number: n/a
Copy: SINGLE
Draft Date: 15 DEC 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: izenbei0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE304461
Document Source: CORE
Document Unique ID: 00
Drafter: CTAYLOR,JR:EW
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760462-1082
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761239/aaaabhsb.tel
Line Count: 122
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 MANILA 18920
Review Action: RELEASED, APPROVED
Review Authority: izenbei0
Review Comment: n/a
Review Content Flags:
Review Date: 02 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <02 JUN 2004 by buchant0>; APPROVED <30 SEP 2004 by izenbei0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SHIPPING DISCRIMINATION: FLAG PREFERENCE AND CCC-FINANCED SHIPMENTS
TAGS: EWWT, RP
To: MANILA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006